

# **EXHIBIT D**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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INTEGRATED COMMUNICATIONS &  
TECHNOLOGIES, INC., et al.,

Plaintiffs,

v.

HEWLETT-PACKARD FINANCIAL SERVICES  
COMPANY, et al.,

Defendants.

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Civil Action No.  
1:16-cv-10386-LTS

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BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

VIDEO STATUS CONFERENCE

Tuesday, November 10, 2020  
3:03 p.m.

John J. Moakley United States Courthouse  
One Courthouse Way  
Boston, Massachusetts

Rachel M. Lopez, CRR  
Official Court Reporter  
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**P R O C E E D I N G S**

(In open court.)

THE DEPUTY CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

Today is November 10th, the case of Integrated Communication Technologies, vs. Hewlett-Packard Financial Services, Civil Action 16-10386, will now appear before this Court.

Counsel please identify themselves for the record.

MR. JOFFE: Dimitry Joffe of Joffe Law PC for plaintiff.

MR. MCGUIRE: Joshua McGuire -- good afternoon, Joshua McGuire, also on behalf of the plaintiffs.

THE COURT: Good afternoon, Mr. McGuire.

MR. SASO: Paul Saso from Gibbons PC on behalf of the defendants.

MR. CALLAGHAN: Anthony Callaghan from Gibbons PC, on behalf of defendants.

THE COURT: I can't hear you, Mr. Bunis. I don't have you listed as muted, but I didn't hear what you said.

MR. BUNIS: How is that, Judge?

THE COURT: Better.

MR. BUNIS: Okay. Michael Bunis, Choate, Hall, and Stewart on behalf of the defendants, Your Honor.

1 MR. EDGARTON: Good afternoon. Mark Edgerton,  
2 Choate, Hall, and Stewart on behalf of the defendants.

3 THE COURT: Good afternoon.

4 MR. BUNIS: Judge, if I may, before we begin, I  
5 just would like to start with just a quick update of  
6 something that I think is rather important and I apologize.  
7 It won't take very long at all, but I think it's important  
8 that I point this out to the Court.

9 THE COURT REPORTER: I'm sorry. Is this Mr. Bunis?

10 MR. BUNIS: I apologize. Yes, Michael Bunis, again  
11 Choate, Hall, and Stewart on behalf of the defendants, Your  
12 Honor, and Madam Court Reporter. So Your Honor, today,  
13 during the deposition of an HP witness, James O'Grady,  
14 something happened that I just need to bring to the attention  
15 of the Court. And specifically, Mr. Joffe engaged in some  
16 conduct that was, frankly, really beyond the pale, Judge. It  
17 was entirely inappropriate and it included behavior that was  
18 threatening the witness --

19 THE COURT: Why don't you tell me what the conduct  
20 was.

21 MR. BUNIS: The conduct -- I didn't hear you.

22 THE COURT: Just tell me what it was.

23 MR. BUNIS: Okay. He specifically threatened the  
24 witness with criminal prosecution, personally. And in  
25 addition to that, or in doing so, acted in a manner just

1       incredibly vocal and intimidating and aggressive,  
2       notwithstanding my repeated efforts to try to ask him to  
3       simply calm down and to take a breath. And frankly, Your  
4       Honor, not only can you take my word for it, but on the  
5       record, the witness, in response to Mr. Joffe's questions  
6       about intimidation, stated, on the record, that he, in fact,  
7       was intimidated, frankly, I think were his exact words, about  
8       what Mr. Joffe had said to him and about the way he was  
9       acting, and that he was concerned.

10               And Your Honor, I don't want to intend to argue the  
11       merits of this, I don't want to be a sideshow to what the  
12       Court has on schedule for today, but in 27 years of doing  
13       this, I have never had to stop a deposition, and as a result  
14       of what Mr. Joffe did today, I ended the deposition, and I'm  
15       sure we'll have an opportunity to discuss this further.  
16       Frankly, I'm not sure what we're going to do, but we have two  
17       other depositions coming up, one on Thursday, and I thought  
18       it was important to at least make the Court aware of it.

19               THE COURT: All right. So my suggestion is this:  
20       I assume, but I don't know whether -- I assume, Mr. Joffe,  
21       without getting into the merits of it, I assume -- am I  
22       correct that you have a different view of what transpired?

23               MR. JOFFE: You're correct, Your Honor.

24               THE COURT: All right.

25               Was this, Mr. Bunis, deposition merely transcribed,

1 or was it also videotaped?

2 MR. JOFFE: Videotaped, Your Honor.

3 MR. BUNIS: Your Honor, it was videotaped and we  
4 actually have, right now, a rough of the videotape itself.  
5 The transcript hasn't come through yet, but we're able to  
6 get, right now, a copy of that videotape.

7 THE COURT: So why don't the two of you do this:  
8 Why don't you -- however -- and I confess, I don't know the  
9 answer to this, but why don't you provide for me -- I take it  
10 the interchange which led you to end the deposition was -- I  
11 don't know if that was one minute or 30 seconds or two  
12 minutes or five minutes, so give me, you know, a couple  
13 minutes before whatever it is that you thought was untoward  
14 occurred and give me up through -- I assume that after you  
15 ended the deposition, that ended the videotaping and -- or --  
16 give me that portion, with the -- if there is a transcript of  
17 it, fine. If there isn't a transcript, I can listen to it,  
18 is fine.

19 And Mr. Joffe, if you think there's something else  
20 earlier that is important for me to review in it, you know,  
21 whether -- then tell Mr. Bunis, without anything else,  
22 simply, like, he's giving me something, I'm guessing in the  
23 neighborhood of two to ten minutes.

24 Would that be fair, Mr. Bunis, roughly?

25 MR. BUNIS: Your Honor, I was just going to mention

1 for the Court, the entire deposition lasted about 40 minutes,  
2 tops.

3 THE COURT: So why don't you give me the whole  
4 thing.

5 MR. BUNIS: That whole thing. Very good.

6 THE COURT: All right. That makes Mr. Joffe --  
7 he's giving me the thumbs-up.

8 MR. JOFFE: I'm giving Mr. Bunis the thumbs-up,  
9 Your Honor.

10 THE COURT: All right. Fine. So give me the  
11 whole -- figure out how to provide me the whole thing. And  
12 you can talk to Ms. Simeone about it and then I can watch it,  
13 and then we'll see.

14 And in the meantime, what I -- what you can do --  
15 I'll watch it and that's the evidence, the first piece of  
16 evidence about what transpired. And then you -- none of  
17 that, submitting that, you are free to seek whatever you want  
18 to seek.

19 And Mr. Joffe, you're free to oppose to whatever  
20 they seek, or you can seek whatever you want to seek. And  
21 the fact that you're free to seek things doesn't mean you  
22 have to. I'm not telling you to do it or not do it, but I  
23 will review it.

24 MR. JOFFE: Thank you.

25 THE COURT: But I will say one thing with respect

1 to that, not with -- not as to the truthfulness or accuracy  
2 of what you describe, Mr. Bunis, because I don't -- I don't  
3 know. I have two lawyers before me with differing views of  
4 what transpired. But I will say that, as a general  
5 proposition, if it hasn't been obvious to all of you in the  
6 four years -- however long it's been.

7 MR. JOFFE: Five, Your Honor.

8 THE COURT: Five. Five years -- time flies when  
9 you're having fun -- that we've been together, that I  
10 believe, in the legal process, and I believe in the craft of  
11 lawyering. So I'm not -- I don't -- on the one hand, I will  
12 tell you I don't like sanctioning lawyers. On the other  
13 hand, I will tell you that I revoked the pro hac vice of a  
14 lawyer from out of state once, because of his conduct in a  
15 deposition. He didn't like what I did and he went to the  
16 First Circuit. You can read the First Circuit's opinion  
17 about it, as to what they thought.

18 So that's neither here nor there as to what you did  
19 or didn't do, Mr. Joffe.

20 Or what you did or didn't do, Mr. Bunis.

21 And one -- just to circle back, with respect to  
22 this deposition, I know that there's a November 20th deadline  
23 for concluding fact discovery, so I will just say, as to this  
24 deposition, since it's obviously not being concluded today,  
25 and I assume you both think this issue needs to be resolved

1 before it could possibly resume.

2 Would that be fair?

3 MR. JOFFE: Yes, Your Honor. And if I may just add  
4 something to that, because it's not the only issue. This is  
5 not the only the deposition that the defendants canceled,  
6 Your Honor. They unilaterally canceled two 30(b)(6)  
7 depositions scheduled for last week and last night they  
8 canceled two 30(b)(6) depositions scheduled for this week.  
9 They also undesignated Mr. O'Grady as a 30(b)(6) deponent,  
10 without providing any substitution. So we don't have any  
11 dates and we have a series of depositions, unilateral, by  
12 the defendants, and that is in addition to terminating  
13 today's deposition. So this is a -- issue --

14 THE COURT: One thing at a time.

15 MR. JOFFE: And plus -- yeah.

16 THE COURT: With respect to this deposition of  
17 Mr. O'Grady, unless I'm wrong, I'm assuming that you, Mr.  
18 Joffe, wish to think that it isn't done.

19 And I think, you, Mr. Bunis, think his conduct  
20 justifies terminating it and it should go forth no longer or  
21 something of that nature. And so I will -- I presume that  
22 I'll need to resolve whatever that dispute is and I -- it's  
23 possible that dispute will resolve before November 20th, but  
24 it's quite possible that it won't be, or even if it is, and  
25 even if the resolution of that leads to further deposition of

1 Mr. O'Grady, that you won't get it done by the 20th. And I  
2 will -- that deadline -- if my resolution of that issue leads  
3 to further deposition of Mr. O'Grady -- and I'm not saying it  
4 does, but if it does, it will occur notwithstanding the  
5 November 20th. It isn't going to be like the deposition, now  
6 we're past the deadline, so it can't be.

7 So as to the issues that you raise, Mr. Joffe, with  
8 respect to 30(b)(6) depositions, so I will say this: The  
9 fact that they've -- that they are making unilateral  
10 decisions as to who is or isn't designated, I find  
11 uninteresting.

12 MR. JOFFE: No, no, no. Not that.

13 THE COURT: They're making unilateral depositions  
14 to cancel things.

15 MR. JOFFE: That's what the thing.

16 THE COURT: Right. So I don't know what to make of  
17 that, without more. We'll circle back to that.

18 MR. JOFFE: Yeah.

19 THE COURT: It could be an issue, it could be not,  
20 but I'll certainly hear you about it, in one form or another.  
21 But I think, first, I want to address the things that have  
22 been raised in writing and then we can circle back to that  
23 and other issues that you all wish to raise.

24 So let me sort of summarize what issues that I knew  
25 about before the hearing started, and what I think about them

1       and --

2               So the first is, there's one issue about which you  
3 both have submitted papers. And so let me tell you some  
4 tentative thoughts about it and then I'm happy to hear you,  
5 first, just on that issue, without bleeding into other  
6 issues, and then we can circle back. And that is this  
7 question about the discovery by the defendants of what I'll  
8 call the -- using their language, the actual, final letter  
9 sent to the Beijing police.

10              So as I understand it, so we're all talking about  
11 the same thing, there was a draft letter from March of  
12 2013 -- there was a letter in draft form from March of 2013,  
13 that I've seen referenced in the pleadings. The plaintiffs  
14 allege it in their complaint and they allege that that letter  
15 was provided to them, at some point, by the -- some of the  
16 defendants. That's one version of the letter. Then there's  
17 a discussion, at least in the amended complaint, of some  
18 edits to that letter. Then there's an allegation in the  
19 amended complaint that a version of the letter, a revised  
20 version of the letter was shown or discussed with the  
21 defendant -- the plaintiffs or at least some version that  
22 was -- the March version, with whatever edits have been  
23 discussed, and that the plaintiffs allege in the complaint,  
24 that that version, what they call the April 22nd version, was  
25 sent to the Beijing police.

1           Then there's a Chinese -- a letter in Chinese  
2     that -- for which the plaintiffs have submitted a  
3     translation. And that letter, according to the translation,  
4     is dated April 22nd, and that's what the plaintiffs have been  
5     referring to throughout the case as the letter actually sent  
6     to the Beijing police.

7           Now, more recently, in the last couple weeks, or  
8     whatever it is, the defendants say they have discovered a  
9     letter, also, from April 22nd, that's a slightly modified  
10    version of what the plaintiffs had been referring to as the  
11    final version. And that, in fact, the one that they've  
12    recently discovered as they've explained in the status  
13    report, is the actual letter sent to the Beijing police in  
14    the final version.

15          So am I correct, first of all, that those are the  
16    various versions of the letter that have been described in  
17    the pleadings? And by saying yes, Mr. Joffe, you're not  
18    agreeing that the letter that they most recently produced is  
19    a true letter, or is a letter sent to the Beijing police; you  
20    are admitting that that's what they've said. Okay? And  
21    you're admitting that this is the universe of versions of  
22    this various letter that we've been talking about, because I  
23    just want to make sure that we're all talking about the same  
24    thing.

25           MR. JOFFE: Right. No, Your Honor, there's one

1 more.

2 THE COURT: Okay.

3 MR. JOFFE: In your chronology of letters, all is  
4 correct, but one more version is missing. There was an  
5 intermediate version in English, sent by Gill on or around  
6 April 1st, and that version incorporated comments that were  
7 provided to the March draft by --

8 THE COURT: So that's what's alleged. So in your  
9 view, there's the March letter. Your client provided  
10 comments, which you described in the complaint. You don't  
11 have any -- then there's an April 1st letter, sent to your  
12 clients from Gill, you say.

13 MR. JOFFE: We do.

14 THE COURT: And you don't have that?

15 MR. JOFFE: We have it in the discovery we  
16 produced.

17 THE COURT: Oh, if you have it in discovery. Okay.  
18 So it exists, I just haven't seen it.

19 MR. JOFFE: No, no, no there's a March draft in  
20 English that you referred to and you described in detail.  
21 And then there was -- in April, there was that draft in  
22 English, with some additional comments that was sent by Gill  
23 to my clients. And then on April 22nd -- and we attach it as  
24 Exhibit A to our papers. On Exhibit A, on April 22nd, David  
25 Gill is now sending a final version, in Mandarin, executed,

1       initialled, dated April 20th.

2               THE COURT: So that's what your client said they  
3 got in April 22nd was the Mandarin version.

4               MR. JOFFE: That's the letter we got in April 22nd.

5               THE COURT: Right. And the translation from 2016  
6 that you produced is a translation of that letter?

7               MR. JOFFE: Yes, correct, Your Honor. We produced  
8 that letter with a certified translation, docket number 22-4,  
9 provided on April 2016.

10              THE COURT: Okay.

11              MR. JOFFE: And that is exactly the letter that  
12 defendants produced as their document.

13              THE COURT: Yeah, yeah, yeah, no, I understand.  
14 It's not my question. Okay. I understand.

15              So I don't know if it's for you, Mr. Callaghan,  
16 you, Mr. Saso, or you, Mr. Bunis, but whichever one of you,  
17 just in terms of the universe of letters, is that what we're  
18 talking about?

19              MR. SASO: I guess this falls on me today, Your  
20 Honor, and yes, I think that is the universe of letters that  
21 we're talking about.

22              THE COURT: Okay. So then what I -- I don't want  
23 to get ahead of myself, but I don't -- let me explain to you,  
24 you want to submit to me, Mr. Saso, on behalf of the  
25 defendants, what you -- the recently discovered April 22nd

1 letter and something else. And you would like me to  
2 determine whether it's the real letter or not. And I  
3 understand, Mr. Joffe, what you want me to do is get a  
4 forensic expert to examine those two documents and perhaps a  
5 few more, and give a forensic interpretation of what's the  
6 true or real, or what have you. And I guess -- I don't see  
7 why I should do either of those things. Okay. And let me  
8 explain.

9           The -- I rendered summary judgment decision and my  
10 summary judgment decision depended, in a meaningful way, on  
11 part of the English translation of the April -- I'm going to  
12 call plaintiffs' final -- plaintiffs' view of what the final  
13 letter is, which is the April -- the Mandarin letter, the  
14 English version that they translated in 2016 of a Mandarin  
15 letter. Okay? That's what plaintiffs have been viewing as  
16 the final letter sent to the Beijing police. My summary  
17 judgment turned, in part, on a piece, some of what was said  
18 in there. Okay?

19           Let's suppose that the -- let's suppose I had a  
20 hearing and a forensic examination, what have you, and I  
21 determined that, in fact, assuming that it would be proper  
22 for me to do all of this, but let's say I determined, in  
23 fact, that the letter that you've recently discovered is, in  
24 fact, the letter that was sent to the Beijing police, and was  
25 the final letter. All right. I don't think that that

1 changes the summary judgment decision and let me tell you  
2 why.

3 I don't think it changes it for two reasons. The  
4 significance, to me, of the -- of the April 22nd plaintiffs'  
5 final version letter was a statement in there. If -- if that  
6 letter wasn't actually sent to the Beijing police, it becomes  
7 a draft of a form, and -- but for purposes of which I was  
8 looking at it, which was an evidentiary purpose, I think it  
9 would be -- it would have some of the same significance,  
10 especially when, although the letter -- the version of the  
11 letter you submit is different and doesn't have, if I recall  
12 correctly, the particular phrase upon which I relied, but it  
13 does have, in the last paragraph, a very similar point.

14 And I think, based on those -- if I accept for the  
15 moment that, on your best case, Mr. Saso, that the  
16 plaintiffs' version is a draft and what you've recently found  
17 is the final version, I think it doesn't, for an evidentiary  
18 purpose, and drawing all inferences on your motion for  
19 summary judgment is in favor of Mr. Joffe's client, as I  
20 must, I don't think it changes summary judgment. I think --  
21 so I don't see why I need to look at it. I don't see why I  
22 need to do the determination you suggest or the determination  
23 Mr. Joffe suggests.

24 What seems to me is then we go forward to trial.  
25 And putting aside whatever else happens in the case. And at

1 trial, you all can argue about the agency issue that I found.  
2 And that will either transform itself into an issue for my  
3 consideration on motion for a judgment at the end of the  
4 plaintiffs' case and/or a jury issue and all the other ways  
5 that might percolate. But in terms of what I would be doing  
6 at trial, it may -- I think that those pieces of evidence are  
7 enough for, essentially, a 104 -- I think it's a 104(b)  
8 determination of preliminary admissibility, which is, I  
9 think, essentially what I'd have to make at summary judgment,  
10 that I think it's admissible. Whether, when it's all said  
11 and done, this letter -- I don't see this letter changing the  
12 104(b) analysis, but if it did, that would be an argument and  
13 a consideration in a motion in limine. Not now.

14 So given all that, I don't see why I need to look  
15 at what you propose I look at or make -- I don't have any  
16 doubt that if I read the documents they'll say what you say  
17 they say when I read them. I don't really think Mr. Joffe  
18 doubts they say what they say. In other words, I think he  
19 thinks if he reads them, the words on the piece of paper will  
20 read what they say they read. He might not give it the same  
21 meaning or truthfulness, or what have you, but I don't know  
22 what I would do, and I don't see why I need to do the  
23 forensic evaluation you suggest, because I don't know for  
24 what purpose I would be doing that.

25 MR. JOFFE: One purpose is the defendants falsified

1 the method of their document and gave you full statements  
2 about it. That's the reason.

3 THE COURT: So I guess I would say that as to this,  
4 Mr. Joffe. Reading the document won't prove to me -- reading  
5 what Mr. Saso suggests I should read, I think there's no way  
6 it's going to prove what you say. I'm not saying that it's  
7 not true what you're saying, but reading those two documents  
8 won't prove it, because they say what -- I'm sure they say  
9 what Mr. Saso says they say. And so --

10 MR. JOFFE: If I may direct your attention to one  
11 phrase that I can show you now is false, Your Honor. May I?

12 THE COURT: You can, but I have just -- just to  
13 remind you, I have just said that, (a), I'm not doing what  
14 Mr. Saso proposes, and (b), I'm not revisiting the summary  
15 judgment, because even if he's right, it doesn't change the  
16 summary judgment. If you want me to further inquire into  
17 this and keep the issue open, you're welcome to do that, but  
18 I remind you that, at the moment, my tentative view is that  
19 their summary judgement motion, which I previously denied,  
20 I'm not reopening, because I don't see how this reopens it.  
21 If you wish to probe further --

22 MR. JOFFE: I'm not asking you to reopen summary  
23 judgment decision, obviously. I'm asking you to look, that  
24 defendant -- Your Honor, there were new developments, since  
25 we filed --

1 THE COURT: Let me say one more thing, Mr. Joffe,  
2 and then I'll give you your chance.

3 MR. JOFFE: Okay.

4 THE COURT: So it seems to me there's one other  
5 issue that the document raises, which hasn't been squarely  
6 addressed, which is you've come forth, candidly, Mr. Saso,  
7 with a document and you say, look, we discovered this  
8 document at the end -- well after the end of discovery. You  
9 provided an explanation of it. I assume it's a document you  
10 wish to use in the case. And so what I would say, Mr. Joffe,  
11 is what I have -- if what you -- so if you want something,  
12 then -- because of that, you should tell me what it is. What  
13 I hear you saying you want me to do --

14 MR. JOFFE: I would like to, Your Honor, if I may.

15 THE COURT: All right. So tell me what you want,  
16 because --

17 MR. JOFFE: If I may. If I may.

18 Since the status report, we have Gill deposition,  
19 Your Honor, so when they say that Gill will testify this and  
20 Gill will testify that, we had Gill testify. And that's not  
21 what he said, Your Honor, not at all. We have his rough  
22 transcript. It just happened last week. I can show you  
23 rough transcript, but what Gill said -- and let me just show  
24 you what I mean by falsifying metadata. In the footnote two  
25 of their declaration, the defendants say, "The claim that

1 defendants recently falsified the final April 13th letter,  
2 even without basis and fact, and flatly contradicted by the  
3 metadata already produced."

4 That's one statement.

5 The metadata that they produced, Your Honor, is  
6 found on -- in my exhibit. It's Exhibit K to my declaration,  
7 document number 392-12. This is an e-mail exchange and one  
8 of the -- if you have that, Your Honor, in front of you, this  
9 is a grave matter and I want to point it out. It goes beyond  
10 just the inadvertency of the nonproduction of the letter.  
11 The -- if you --

12 THE COURT: Which document is this, Mr. Joffe?

13 MR. JOFFE: It is document number 392-12 and it is  
14 Exhibit K to our status report.

15 THE COURT: Okay. Go ahead.

16 MR. JOFFE: If you look at page 405, using the  
17 headers up top, you will see in the middle and that's what  
18 I'll -- discovery they then provided, and I believe  
19 defendants' assistant confirmed, that the metadata that they  
20 provided had two dates, April 22nd and 23rd, and David Gill  
21 as a custodian of those documents. That's one.

22 Then they say that Mr. Gill will testify that this  
23 is the actual version of the letter that was revised as  
24 submitted to the police. And in the last sentence of their  
25 declaration -- not making up the last -- yeah, I think it is.

1 In the last sentence, they say that the creation date of both  
2 the PDF and one version of the final letter, plainly indicate  
3 that the documents were created in April of 2013, and no  
4 reasonable person would conclude otherwise.

5 So we have Gill testify about these revisions last  
6 week, Your Honor, and he said that it wasn't me. It wasn't  
7 Gill who made the last revision. And after further  
8 prompting, he said that it was done by a person from China,  
9 Meng Tao, who was an employee of HP China, who made that  
10 revision in Mandarin version, Your Honor, and they made that  
11 revision in late April, early May. The metadata provided by  
12 defendants and the whole story about this is false. David  
13 Gill testified to that.

14 THE COURT: How do we know --

15 MR. JOFFE: One more important point. We have  
16 Barclay testify on Friday. He said that his metadata, the  
17 custodian data for his files is false. I have him say that  
18 the lawyers who provided the metadata of his documents to us  
19 made false statements. They falsified his metadata and they  
20 now falsified the metadata of this document, Your Honor.  
21 This is a very serious matter. I will show you, after we've  
22 done with depositions, that they lied in sworn statements.  
23 They lied. The witnesses lied. They suborned perjury, they  
24 obstruct justice, they destroyed material evidence in pending  
25 criminal investigation, and they're running this coverup

1       until now --

2               THE COURT:   What's the pending criminal  
3       investigation?

4               MR. JOFFE:   There was a pending criminal  
5       investigation in China and defendants deliberately destroyed  
6       all the remaining transceivers from the same Commonwealth  
7       batch that was arrested in China.   They paid TT Global  
8       \$200,000, specific instructions to destroy those  
9       transceivers, after, after they asked TT Global to send  
10      samples, photos, information, all of those receivers to H3C.  
11      After H3C tested those transceivers and we don't know what  
12      the results are, because we're not shown, but defendants were  
13      told that the transceivers are questionable in nature and  
14      origination and they decided to destroy and pay TT Global  
15      \$200,000 to destroy them.

16              THE COURT:   And now, Mr. Joffe, is this case -- are  
17      you bringing this case on behalf of the Beijing police for  
18      obstruction of justice against HP for impeding a criminal  
19      investigation?

20              MR. JOFFE:   No.   My witnesses against HP, who's  
21      been running a fraudulent coverup in this court and I will  
22      show you now, in depositions and documents that we have.  
23      They destroyed -- there were about probably 5,000 of those  
24      transceivers in the packs.

25              THE COURT:   I'll tell you what we're going to do.

1 With respect to the document, I've given you both my  
2 tentative thoughts about what I've been thinking about. If  
3 HP --

4 Defendants, if you want me to do something --  
5 either you want me to do something different than you  
6 proposed, or if you think I should do what you suggested,  
7 notwithstanding what I've said, you can file something and  
8 tell me to do that and why and I'll read it and think about  
9 it. And otherwise, I'm -- nobody has filed a motion, so  
10 otherwise, with respect to your request, I'll just leave it  
11 as it is and the record will be what it is. I'm not going to  
12 do it unless you propose to me -- you come back to me with  
13 something else as to why I should.

14 As to you, Mr. Joffe, given what you are  
15 suggesting, I think what you need to do, because you're  
16 making extremely serious allegations.

17 MR. JOFFE: Yes, Your Honor, and I don't do it  
18 lightly, Your Honor.

19 THE COURT: I understand that.

20 MR. JOFFE: I haven't done anything like that in  
21 six years.

22 THE COURT: And so --

23 MR. JOFFE: Yes.

24 THE COURT: Well, I think in the six years, just to  
25 be clear, just so the record is accurate, I think, but I

1 can't recall exactly now, because it has been five years, but  
2 I do think in the last five years, at the beginning of this  
3 case, you made some pretty serious allegations against some  
4 people who I dismissed in the case, because I thought you  
5 were treading on Rule 11, in terms of making allegations that  
6 I though violated the rule.

7 And if I recall, just so we're clear, correctly, I  
8 denied your first amended complaint, because I thought you  
9 violated local rules and I thought some of the allegations  
10 violated Rule 11 and I gave you another chance to file an  
11 amended complaint, and you filed the exact same document,  
12 typos, blanks, and included the same people who I said  
13 violate -- who I thought -- I gave you a warning that I  
14 thought they --

15 MR. JOFFE: Your Honor, I took them out.

16 THE COURT: I'm not finished, Mr. Joffe. The way  
17 this works is you can speak. I'll give you a full and fair  
18 opportunity, but not until I'm done. So we're clear, when  
19 you say "never before," it's not -- I'm going to decide this  
20 one, not based on that one. I'm going to decide this one  
21 based on the evidence in this case, but I can't let that  
22 pass, when I don't think that's an accurate reflection of the  
23 record in this case. I did not sanction you at that time,  
24 because I thought, in fairness, given the seriousness of the  
25 allegations and the other circumstances, I wasn't prepared to

1 do that, but I don't say that it was right what you did. And  
2 certainly it wasn't the highest -- the best that lawyers can  
3 produce.

4 So in any event, what -- out of this, if you want  
5 me to do something, what you should do is file a motion. And  
6 you should explain to me the basis for your belief, just as  
7 you did now, but citing the documents and what it is -- what  
8 relief that you want, because I'm unlikely, unless you can  
9 assume that nothing more is coming out of this document, in  
10 terms of summary judgment or anything else, unless they come  
11 back at me, in which case you'll have a chance to respond to  
12 that. All right.

13 MR. JOFFE: Understood, Your Honor. Yes.

14 THE COURT: Fair enough. And then I'll look at  
15 that, and defendants, you'll get a chance to respond to  
16 whatever he files and that will be -- and you can ask for  
17 whatever you want to ask for out of this.

18 MR. JOFFE: Yes, Your Honor.

19 THE COURT: The new letter.

20 MR. JOFFE: Thank you, Your Honor. We intend to do  
21 that. And if we can do it after we finish all the  
22 depositions and I have time to put it all together, because I  
23 have a long list of grievances, but this one is very serious  
24 and grave and I don't do it lightly again.

25 THE COURT: Fine.

1 MR. JOFFE: Thank you, Your Honor.

2 THE COURT: How about -- would two weeks from today  
3 be enough time?

4 MR. JOFFE: Yes, yes, Your Honor. It will be  
5 enough time. I'll get transcripts and I'll get everything  
6 ready and, yes. Two weeks is fine.

7 THE COURT: And Mr. Saso, is there anything else  
8 about the new document that you want to address today?

9 MR. SASO: We don't disagree at all with your  
10 conclusion. The only thing that I think that I would add in  
11 terms of just clarifying for Your Honor is that we have  
12 produced what we view as the final April 2013 letter to the  
13 plaintiffs and we have also produced the metadata for that  
14 PDF version of that document. That is already in the hands  
15 of the plaintiffs. The issue, in terms of what documents we  
16 were proposing for an in-camera review were privileged --

17 THE COURT: Privilege log documents.

18 MR. SASO: But those two types of documents are  
19 already in the hands of the plaintiffs. The letter,  
20 itself --

21 THE COURT: Yes. To the extent that I suggested  
22 otherwise, I understood that. It's what you really wanted me  
23 to review is not so much those two, but 470 to 80, or  
24 thereabouts, the six or seven privilege documents around that  
25 time, which you say would then confirm and -- but the reason

1 that I just don't see the need is I don't see how, even if I,  
2 quote, confirmed it, how -- I see as it playing out, it  
3 doesn't change summary judgment, why do I need to do it.

4 MR. SASO: And we understand that, I think, Your  
5 Honor. I think that what we wanted to do is come forward and  
6 say, look, we think there are legitimate questions about why  
7 this document was not produced earlier. We have provided  
8 that explanation. And plaintiffs are making what we view as  
9 fairly wild accusations about either the defendants or myself  
10 manufacturing evidence. And to the extent that Your Honor  
11 felt like you needed to confirm that information, that was  
12 sort of a road we were going down. I feel --

13 THE COURT: Sure. I feel like the proper way to go  
14 here would be Mr. Joffe has the -- you know, you guys  
15 discovered a letter that hadn't been produced that you feel  
16 like should have been produced in discovery earlier. You  
17 turned it over. Mr. Joffe thinks that that gives rise to  
18 evidence of various forms of misconduct. He can ask for  
19 relief that he seeks as a result of late disclosure, new  
20 documents. He could ask for sanctions, whatever he wants to  
21 ask for, he'll ask for.

22 You'll get a full chance to respond, and then  
23 I'll -- this is his -- then he'll figure out what he wants  
24 and he'll propose it, or what he's asking for, and then I'll  
25 rule on it.

1 MR. SASO: Thank you, Your Honor.

2 THE COURT: And then we'll see.

3 All right. The second issue is, with respect to  
4 service of Mr. Pekar -- if I'm saying his name correctly.  
5 Pekar. Is there any further developments on that?

6 MR. SASO: No, Your Honor.

7 MR. JOFFE: Your Honor --

8 THE COURT: Do you represent him, Mr. Joffe?

9 MR. JOFFE: Sorry. Pardon me?

10 THE COURT: Do you represent him?

11 MR. JOFFE: I can represent and --

12 THE COURT: I'm not asking if you can. I'm asking  
13 if you do.

14 MR. JOFFE: If I do.

15 THE COURT: Do you represent him with respect to  
16 the deposition --

17 MR. JOFFE: I'm not, with respect to depositions, I  
18 will. I'm not his attorney. He didn't retain me. I told  
19 him, as I told every one of the former employees, we'll  
20 represent them and defend them on depositions. I'm not his  
21 attorney. He didn't authorize me to accept service of the  
22 subpoena.

23 THE COURT: Are you authorized to speak for him  
24 here, with respect to the depositions?

25 MR. JOFFE: Well, no. I'm not speaking for him

1 here. No, I'm not speaking for him here. Why am I -- I  
2 haven't talked to him. I have no contact with him.

3 THE COURT: I'm just asking the question,  
4 Mr. Joffe.

5 MR. JOFFE: No, I'm not representing Mr. Pekar as  
6 a -- well, as a client in this proceeding. I have suggested  
7 to plaintiffs that I will defend -- we will defend all the  
8 former employees and they served subpoenas on all the former  
9 and we have to do --

10 THE COURT: So the record is clear, Mr. Joffe, you  
11 do not represent Mr. Pekar, as we sit here today, yes or no?

12 MR. JOFFE: Your Honor, I'm --

13 THE COURT: In other words, I know you're not his  
14 lawyer for all --

15 MR. JOFFE: I don't know how to answer this.

16 THE COURT: This is why I'm asking the question,  
17 Mr. Joffe. It's really very simple. I'm not asking you  
18 whether you represent him as his general counsel.

19 MR. JOFFE: Okay.

20 THE COURT: Or whether you represent him in other  
21 matters, and I understand he's not a party in this case.

22 MR. JOFFE: Right.

23 THE COURT: The defendants want to depose him.  
24 Either they get to arrange that directly with him, unless  
25 he's represented by counsel. There is nothing that indicates

1 to me, in the record before me, that he's represented by any  
2 human being on the face of the earth, except -- for the  
3 purpose of this deposition, except, possibly, you.

4 Either you accept that they still need to serve  
5 him, or you don't represent him, in which case they don't  
6 have to go through you. It doesn't change that you might not  
7 represent him and you could end up representing him at the  
8 deposition. I want to know if right now, today, you  
9 represent him or not.

10 MR. JOFFE: Well, I will have to say I represent  
11 him, but Your Honor, I gave you the -- what transpired. I  
12 told plaintiffs that I will defend all the third party,  
13 former employees --

14 THE COURT: Okay. So you represent him so --

15 MR. JOFFE: -- they will serve him and they haven't  
16 served him. And I didn't really discuss anything with him  
17 about that. I told him I will and that was it.

18 THE COURT: So here's the thing, you represent him  
19 for purposes of this deposition and as we sit here today,  
20 correct?

21 MR. JOFFE: Yes, okay. Yes, Your Honor.

22 THE COURT: It's not "okay." I'm asking you.

23 MR. JOFFE: No, correct. I suppose.

24 THE COURT: Okay. Well, it's not really I suppose,  
25 either you do or you don't.

1 MR. JOFFE: Well, I do, Your Honor.

2 THE COURT: Okay. Fine. So then the question is,  
3 Mr. Joffe -- and so far, in your view, service has not been  
4 perfected. Yes or no?

5 MR. JOFFE: Yes, Your Honor, it wasn't. It was  
6 mailed.

7 THE COURT: He's not been properly served.

8 MR. JOFFE: And it wasn't valid service.

9 THE COURT: All right. And are you going to accept  
10 service for him, or waive service?

11 MR. JOFFE: No, I haven't spoken with him. I need  
12 to talk to him about that, because --

13 THE COURT: At the moment, you're not agreeing to  
14 waive service and you're not agreeing to --

15 MR. JOFFE: I will not -- no, I'm not agreeing  
16 without consulting with Mr. Pekar to waive service on his  
17 behalf, I'm not. I can't.

18 THE COURT: All right. And you haven't, so far,  
19 been authorized.

20 MR. JOFFE: I haven't been authorized, but --

21 THE COURT: So this is what we're going to do.  
22 You're going to talk to Mr. Pekar and you're going to find  
23 out whether he wishes to waive service or not.

24 MR. JOFFE: Okay. Yes, Your Honor.

25 THE COURT: The deadline for his deposition is

1 extended past November 20th. All right. Whether or not he's  
2 served. It's clear to me on the record that the defendants  
3 have made more than diligent efforts to attempt to serve  
4 Mr. Pekar, and Mr. Pekar doesn't wish to be served. That's  
5 his right, if he doesn't wish to be served.

6 MR. JOFFE: No, that's not true. Your Honor, he's  
7 been traveling and he's never in the place where they try to  
8 serve. I understand they've been told that he's traveling.  
9 They served his mother -- I don't know where they found his  
10 mother -- and they put the nail, the thing on the gated  
11 community door where he doesn't live currently, he's  
12 traveling. So he doesn't try to avoid the service. I  
13 proposed dates. I proposed dates to plaintiff when he's  
14 going to appear for deposition. He had the --

15 THE COURT: What days did you propose and where's  
16 the letter?

17 MR. JOFFE: I have the letter. I have everything.

18 THE COURT: What dates?

19 MR. JOFFE: I proposed for Mr. Pekar to start  
20 deposition on Monday, November 9th, for three and a half  
21 hours -- or three hours that he had that day and then I said  
22 he will be available on subsequent days like this, for three  
23 hours. Let's schedule them, except for the rest of --

24 THE COURT: So Mr. Joffe, can I ask you a question?

25 MR. JOFFE: Yes.

1 THE COURT: If that's true, why did you waste my  
2 time and all of the time of all of these people here after  
3 you got the status report? Why didn't you file one page that  
4 said, Judge, you don't need to bother with this, because I've  
5 already told them that they don't need to serve him, he'll  
6 sit for depositions on the 9th, instead of these other dates?

7 MR. JOFFE: Your Honor -- Your Honor, they filed  
8 the paper on Friday evening, after I was just doing,  
9 finishing deposition. That was two days ago. I had no  
10 time -- they filed five or three motions. I just had no time  
11 to respond to all of these motions. I'm taking and defending  
12 depositions every day. I have all week of depositions last  
13 night -- last week. On Friday, when I was finishing --

14 THE COURT: What's Mr. McGuire doing?

15 MR. JOFFE: -- Mr. Saso was filing those motions.  
16 I just have no time for it and --

17 THE COURT: But you're telling me that you're not  
18 waiving service, but you --

19 MR. JOFFE: I'm not waiving service.

20 THE COURT: And he would have appeared for  
21 deposition without service on Monday, November 9th?

22 MR. JOFFE: Yeah. That was my proposal.

23 THE COURT: Even though he hadn't been served and  
24 even though you're not waiving service?

25 MR. JOFFE: It may be in my papers that I filed --

1           THE COURT: Mr. Joffe, I'm just trying to  
2 understand. On the one hand, you won't waive service, which  
3 is fine. I don't have a problem with that. But on the other  
4 hand, you say you already agreed to have him deposed on  
5 November 9th, even though he hadn't been served. That makes  
6 no sense.

7           MR. JOFFE: I haven't agreed. I told them -- I  
8 told the defendants and I have it in writing, I will find it.  
9 It was several times, I told them that I've heard from  
10 Mr. Pekar. He called me like for five minutes --

11          THE COURT: This is what we're going to do,  
12 Mr. Joffe. I'm not going to waste more time on this.

13          MR. JOFFE: That's it. That's it.

14          THE COURT: This is what we're going to do. You  
15 can talk to your client, Mr. Pekar. I stand by what I said,  
16 that he doesn't want to be served. I base that conclusion on  
17 the fact that it's obvious that the defendants have provided  
18 notice, in various ways, to him, and he hasn't reached out to  
19 suggest that he would agree to some deposition date. He  
20 doesn't have to. If it turns out that -- I'm not  
21 adjudicating now whether the efforts that the defendants made  
22 are sufficient service or not, but I draw the conclusion from  
23 that that he doesn't want to be served. People have to want  
24 to be served. I disagree with Mr. Joffe's characterization  
25 of the record, that it's merely he's been traveling. I don't

1 have any evidence, at all, that he's been traveling. I just  
2 have your representation of that, Mr. Joffe.

3 MR. JOFFE: Which I have from --

4 THE COURT: Don't interrupt me.

5 MR. JOFFE: Sorry.

6 THE COURT: But I do have the facts in evidence put  
7 before me by the defendants. But all I want to do,  
8 Mr. Joffe, it's very -- it's not a complicated thing. I just  
9 want to solve this problem. Either Mr. Pekar is willing to  
10 appear for a deposition and you and the defendants can work  
11 out the date, or he doesn't want to appear for deposition,  
12 unless he's legally required to do so. That is also his  
13 right. In which case, as his lawyer, you're going to tell me  
14 that he doesn't agree to waive service and then I will  
15 adjudicate whether there's been service or not.

16 And I'm simply telling all of you that the deadline  
17 of November 20th is not going to apply to Mr. Pekar's  
18 deposition, because based on the record before me, I think  
19 it's fair to see if you can work it out, and if you can't  
20 work it out, I'll adjudicate whether service has been done.  
21 If it has, he'll have to show up, and if there has to be a  
22 Rule 45 subpoena, or if it has to be enforced in the District  
23 of Connecticut, so be it. And if he hasn't been properly  
24 served, then I'm going to give the defendants more time to  
25 serve him.

1           And I assume his residence is more than  
2   100 miles -- he's not within this court.

3           MR. JOFFE: I think he -- the residence, I think,  
4   within, but whether he's there now, I don't know.

5           THE COURT: I understand.

6           MR. JOFFE: I spoke with him twice and --

7           THE COURT: The rule is he has to be within the  
8   jurisdiction, or within 100 miles of the state border, or the  
9   courthouse.

10          MR. JOFFE: Probably from the courthouse -- well, I  
11   think defendants know where he lives, because they serve. I  
12   don't even know where he lives.

13          THE COURT: Mr. Saso?

14          MR. SASO: I am looking right now. I thought he  
15   lived in Massachusetts, but I can --

16          MR. JOFFE: Maybe, yes.

17          THE COURT: Oh, he lives in Massachusetts?

18          MR. JOFFE: Probably, yes.

19          MR. SASO: I believe he does.

20          THE COURT: Then there's no Rule 45 subpoena issue.  
21   Then you serve him. And if you haven't -- if you don't  
22   succeed, then -- if you have only what you have, if he  
23   agrees, fine. If he doesn't agree, then I will adjudicate  
24   whether the service you've done is sufficient and then I  
25   will -- if it is -- if I determine it's sufficient, then I'll

1 do what is my standard practice in such a circumstance. I'll  
2 issue an order and I'll explain why I think it's sufficient.  
3 I'll order him to appear at a specific date and time. And if  
4 he fails to appear, then I'll proceed with contempt  
5 proceedings. And so in one way or another, we won't be bound  
6 by the -- you won't be bound by the November 20th date on  
7 that one.

8 MR. SASO: Thank you.

9 THE COURT: And anything else on that?

10 And Mr. Joffe, what you have to do is file a report  
11 back to me by close of business on Tuesday and simply telling  
12 me that he either waives service -- he can waive service, he  
13 can concede to service that they've done as being sufficient,  
14 in which case -- and that you and Saso have worked out a date  
15 and place for his deposition, or he contests service, in  
16 which case that's fine. That's also fine and then I'll  
17 adjudicate what's before me. They've given me what they've  
18 said, and if you tell me that, then I'll just wait the  
19 14 days, the end of next week, and then the next Friday,  
20 which will be the 14 days. You can submit your opposition to  
21 their motion, explain to me why their service was no good and  
22 then I'll adjudicate it.

23 MR. JOFFE: Okay, Your Honor, thank you. I just  
24 need to get in touch with him for all that, which I'll do --  
25 I'll endeavor to do right away.

1 THE COURT: All right. That takes care of the  
2 service issue and --

3 MR. JOFFE: Your Honor, may I just one -- one  
4 thing, because we're on this topic of the scheduling. We  
5 actually have depositions scheduled to end this Friday.  
6 November 13th is our last deposition date.

7 THE COURT: I think it's November 20th is the  
8 deadline on the schedule.

9 MR. JOFFE: We were -- I think Paul will agree that  
10 the parties labored under the impression that the  
11 November 13th is the cutoff date.

12 THE COURT: Oh, you're right. I stand corrected.  
13 It's November 13th.

14 MR. JOFFE: So November 13th. So all the dates up  
15 until November 13th are correct and we don't have any  
16 30(b) (6) --

17 THE COURT: So let me just correct something that I  
18 said, then.

19 MR. JOFFE: We don't have any 30(b) (6).

20 THE COURT: With respect to Mr. Pekar and with  
21 respect to the person that you raised, Mr. Bunis, I referred  
22 to November 20th. That was a mistake, an error. It's  
23 November 13th, you're -- Mr. Joffe is correct, that's the  
24 deadline for depositions. And so what I mean is that the  
25 November 13th date doesn't apply to those two. We'll resolve

1 the issues and then we'll take care of it, if doesn't get  
2 done, so I apologize for any confusion arising from that.

3 MR. JOFFE: And then there's an issue of 30(b)(6)s.

4 THE COURT: Yeah. We're going to get to that,  
5 Mr. Joffe, but not yet.

6 MR. JOFFE: Okay. Thank you.

7 THE COURT: So you filed a motion, Mr. Saso,  
8 another motion, with respect to a couple things. One of the  
9 issues in it was dismissal, one was timing, and one was an  
10 extension. And so briefly, the -- taking them in a different  
11 order, one was there's several deponents who require  
12 translators. And under the prior orders submitted by you and  
13 approved by me -- by "you" I mean the parties -- the -- those  
14 depositions are presumptively two days, without any special  
15 permission. And you don't have enough days between now and  
16 November 13th to make those two days. Is that essentially  
17 the issue for those -- I think, it was three or four  
18 deponents?

19 MR. SASO: It's that issue, combined with -- look,  
20 I think we would have worked this out with plaintiffs'  
21 counsel. If they said that they would sit for a second day  
22 next week, we would have proposed to Your Honor that we  
23 extend that, but we haven't even gotten that far, because the  
24 plaintiffs won't agree to sit for that second day. I think  
25 that they're taking a wait-and-see approach and say let's see

1 if you first use your first day and your seven hours and  
2 we'll only consider scheduling a second day after the first  
3 day has concluded. And given the schedule, given that we're  
4 supposed to be done by this Friday, there is just simply no  
5 more time --

6 THE COURT: So Mr. Joffe, what's your position on  
7 the second day?

8 MR. JOFFE: Our position is it's not what Mr. Saso  
9 said.

10 THE COURT: What is your position?

11 MR. JOFFE: Well, our position was that if you have  
12 translator, you're entitled to extra time, second day, for  
13 seven hours. That's true. Under the protocol, the witness  
14 itself has a choice of sitting longer on day one, beyond  
15 seven hours, and continuing that day. Our position was Jade  
16 Cheng is obviously a witness with knowledge on all areas and  
17 two days for Jade Cheng, with translator, fine. But for  
18 people like his wife, Caroline, or people who, in Chinese, we  
19 agree to sit longer on the first day. If they need a second  
20 day after that, they can schedule it. We don't oppose that.  
21 But our witnesses would like to sit, you know, the first day  
22 for nine hours, instead of seven, rather than come back for  
23 the second day.

24 So we didn't oppose. Jade Cheng is testifying  
25 today, for the first day and he will appear for the second

1 day. We have no opposition to that. The problem is that,  
2 Your Honor, our depositions have been canceled all the time.  
3 All our witnesses, we haven't canceled a single deposition.

4 THE COURT: So the way we're doing this, Mr. Joffe,  
5 we're not -- there's no trying of issues. We're going to go  
6 through them one by one and resolve everything.

7 MR. JOFFE: Okay.

8 THE COURT: So if they canceled -- even if they've  
9 outrageously, and in violation of every rule, they have  
10 canceled every deposition that you've sought, that is  
11 irrelevant, in my view, to the second day. We're going to  
12 resolve the second day for what it is and then -- don't  
13 interrupt me. It's especially difficult, Mr. Joffe, under  
14 Zoom, when you do that. Okay. Just wait. I will give you  
15 the chance, as I've always give given you the chance, to say  
16 everything you wish to say. When you do that, you obstruct  
17 the entire proceeding, and you make the record -- you make it  
18 difficult for me to understand what you said, you make it  
19 difficult for everybody else, and you make the record  
20 difficult to report as to what transpired. So, please, don't  
21 do that.

22 So we will get to all of the depositions you say  
23 they canceled and, if they did it improperly, I will remedy  
24 it, and so -- but it's one thing at a time.

25 All right. So this is what you do. With respect

1 to the second day, I -- with all due respect, Mr. Joffe, I  
2 don't think that approach is reasonable. I think that  
3 it's -- it's difficult scheduling, in the present times, it's  
4 difficult to schedule interpreters. The Court, itself, has  
5 difficulty scheduling interpreter. And so I think what you  
6 ought to be doing is for all the people, you assume it's two  
7 days, you schedule two days. If you all agree to go past  
8 seven hours and do nine hours and if at the end of nine  
9 hours, they're done, then you cancel the second day. That is  
10 easier and better than at the end of the nine hours, trying  
11 to figure out, among all you people, when is the second day  
12 that the witness and the court reporter and the videographer  
13 and the interpreter are available, especially when you're on  
14 a tight schedule. So you're going to go forth and schedule  
15 the second day for all of the witnesses to the extent you  
16 haven't, so it's in place.

17 Have those depositions yet transpired, Mr. Saso?

18 MR. SASO: We actually are taking a break from one  
19 of those depositions right now. Jade Cheng started this  
20 morning, but the others, Caroline Cheng is scheduled for this  
21 Thursday. Jason Yuyi and Cathy Yu have not yet been  
22 scheduled their first day --

23 THE COURT: All right. So this is what you're  
24 going to do --

25 MR. JOFFE: The 13th. November 13th date.

1           THE COURT: You're going to work out the second day  
2 with all those people. With respect to extending the time  
3 for depositions, I'm not going to do that now, but what I am  
4 going to tell you to do is there's a defined list of people  
5 who have been authorized for depositions. You can submit to  
6 me the list of, like, once you work out dates. If you work  
7 out dates, I will reasonably allow them to happen past  
8 November 13th, certainly with respect to the two lawyers  
9 identified and certainly with respect to these three people,  
10 because their position was not reasonable and so -- or  
11 practical.

12           And so you give me a list of all the people and you  
13 tell me depositions, you know, and it's done, it already  
14 occurred, it's over. Fine. Or it's scheduled for whatever  
15 date you reasonably worked out, and if you reasonably work  
16 out dates in a reasonable period of time. It doesn't have to  
17 be next week, but promptly, because the trial date is not  
18 changing for this. And so then you give that to me and then  
19 I will approve that. And if you can't work it out, agree,  
20 then we'll have another hearing as soon as we need to have  
21 another hearing, and then I will decide when that will occur.

22           But I think you will all be happier if you  
23 cooperate with each other reasonably and practically, rather  
24 than have me decide when you're going to show up for  
25 depositions. Because I won't -- if I'm deciding, I'm just

1 going to decide based on the schedule and I'm not going to be  
2 that interested in other things. And you'll be able to think  
3 about lots more things in your scheduling than me.

4 And so that's why it's wiser, Mr. Joffe, to be  
5 practical and schedule the second day yourself, rather than  
6 let me schedule the second day.

7 Okay. So that takes care of the two-day  
8 depositions, right. Mr. Saso?

9 MR. SASO: Yes, Your Honor.

10 THE COURT: And it takes care of the -- the  
11 extension issue really relates to all of the different  
12 depositions, right?

13 MR. SASO: That's correct.

14 THE COURT: That's you. And that will resolve it  
15 from your perspective.

16 And then the third issue you wanted was dismissal  
17 of two of the plaintiffs with respect to identifying where  
18 and when they would submit for their -- essentially their  
19 IMEs and changing the timing of their IME?

20 MR. SASO: That's right. We -- the larger issue is  
21 scheduling their IMEs. And we are sort of between a rock and  
22 a hard place when it comes to the two Chinese residents.  
23 Again, Jason Yuyi and Cathy Yu. At the very beginning of the  
24 deposition schedule, we tried to get information about when  
25 they might be here, so we could schedule their medical exams,

1 but never received any information about their travel. And  
2 so we then proposed that we reschedule all of the medical  
3 exams for these five plaintiffs during the expert phase and  
4 the plaintiffs declined. So with respect to the two Chinese  
5 residents, we feel as if we have no options left, that they  
6 are refusing to show up by this Friday and they are refusing  
7 to reschedule their deposition -- I'm sorry, their medical  
8 exams during the expert phase of this case.

9 THE COURT: So they have not yet told you when  
10 they're available, between now and Friday, for their IME?

11 MR. SASO: They, in fact, should be in the United  
12 States right now, given US travel restrictions for -- based  
13 on COVID, they would have to be here and quarantining for  
14 14 days, and they should be in the United States if they're  
15 going to appear for that medical exam by Friday.

16 THE COURT: Are they in the United States?

17 MR. JOFFE: They're traveling to Macao, which is a  
18 third-party country that they can take --

19 THE COURT: I've heard of it.

20 MR. JOFFE: -- for depositions.

21 And Your Honor, we've had this discussion with  
22 defendants, I think, for several months now. They always  
23 pushed to have medical exams at the same time as depositions  
24 and now the issue is not with two Chinese. We have three  
25 plaintiffs here who was also examined medically and they're

1 present, physically, here, and defendants have nothing. They  
2 don't have experts, they don't have protocol. They don't  
3 have stipulation under Rule 35, I believe, that tells you the  
4 manner of exam, who is the expert, and all of that. They  
5 just simply don't have -- they're not ready.

6 They told me that. Mr. Callaghan told me on the  
7 phone and they wrote it in the e-mail. They want extension,  
8 because they don't know what experts to use and what to ask.  
9 The logistics of it is not an issue. Alex Styller is here,  
10 Caroline Cheng is here, and Jade Cheng are here. Jade  
11 Cheng --

12 THE COURT: Are those three people going to take  
13 the medical exam for the other two?

14 MR. JOFFE: For the other two, we discussed it with  
15 Mr. Callaghan, as well, and we proposed to do tele-exam,  
16 telemedicine exam. Like we do depositions by Zoom, you can  
17 do medical exam by video and I told them they will be  
18 available in Macao. They're specifically getting passports,  
19 visas, they're traveling right now to sit for depositions.  
20 They're not rich people, Your Honor. And I offered him --  
21 and we discussed this before, that if you do deposition by  
22 Zoom, in a country that allows that, why can't you do medical  
23 exam by Zoom. They will be available. They cannot travel to  
24 the United States right now, Your Honor, but that's not their  
25 fault. It's really not that their --

1 THE COURT: Why can't they travel right now?

2 MR. JOFFE: Because they don't have visas. They're  
3 hoping while in Macao, in the third-party, in the third  
4 country, they will apply for US visa there, through  
5 consulate, because it's faster. In China to get visa now for  
6 them, it's very difficult, you -- I don't know all of the  
7 details, but I've been in endless communications, that you  
8 need to get this, and they tell me this office is closed.  
9 They went there, that's closed, and we're trying to find a  
10 way to do it.

11 And we found -- we went through many countries to  
12 figure out which one allowed deposition, which one allowed  
13 visas, and which one are not closed for Zoom. It was a  
14 process, Your Honor. We went through Pakistan, Vietnam,  
15 Macao, everything. We found Macao close by. They can get  
16 visa in three days, they can have the test, and they will be  
17 there. They will be there this Friday for deposition. They  
18 can do remote medical exam. We discussed it with Anthony  
19 Callaghan, and Mr. Callaghan said it's on the table. They  
20 didn't rule it out. But I was always telling them that in  
21 order to do medical exam you have to do either Rule 35 motion  
22 that it says that --

23 THE COURT: I already authorized the medical exam.

24 MR. JOFFE: No, but you didn't provide all the  
25 details that the rule says, Your Honor. And I'm opening

1 Rule 35. I think that's examination of people and things.

2 THE COURT: You actually want to get to trial,  
3 Mr. Joffe?

4 MR. JOFFE: I think I'll win before trial even,  
5 Your Honor, honestly, but, yes, I want to do -- win this case  
6 and I'm not moving the date. The date is set. You said it  
7 many times, so let's not move the date.

8 THE COURT: I'm not moving the date. I'm just  
9 asking if you actually want to move the ball forward.  
10 Sometimes you make me feel like you don't really want to move  
11 the case forward.

12 MR. JOFFE: Your Honor, Your Honor, let me just  
13 read the rule. And the rule says that if you want to do  
14 medical examination, then, content of the order, the order  
15 must specify the time, place, manner, condition, scope of the  
16 examination, personnel and personnels who will perform it.  
17 Your order doesn't do anything like that, Your Honor. Your  
18 order is not a proper order for Rule 35 examination and we --

19 THE COURT: Fine, would you like me to issue an  
20 order that has all of the details required by Rule 35?

21 MR. JOFFE: Yes, I would, I would. And I ask them,  
22 let's do this --

23 THE COURT: And that should happen before  
24 November 13th.

25 MR. JOFFE: You will issue the order before the --

1 THE COURT: No, the examination should happen  
2 before November 13th.

3 MR. MALLARD: Okay. They're ready.

4 THE COURT: No, no, I'm asking you. Not "okay."  
5 In other words, Mr. Joffe, you think the order is  
6 insufficient. Fine. If the order -- my original view of the  
7 order was they wanted it. If I recall correctly, you didn't.  
8 I said they were entitled to it. I thought you would all  
9 work out the date, time, and place, and the details.

10 MR. JOFFE: I thought so, too.

11 THE COURT: But you all have not worked out the  
12 date, time, and place and the details. They've requested for  
13 me, I'm perfectly happy to decide where, when, and under what  
14 circumstances that it will happen. But what I will likely  
15 say is that it has to happen in person, that's how I --  
16 nobody has persuaded me why it should happen by Zoom. And I  
17 would say, well, why shouldn't it happen by November 13th, in  
18 person, because that's when the end of fact discovery is,  
19 and --

20 MR. JOFFE: Okay. But then everybody else who's in  
21 the United States should, but they're not -- they cannot do  
22 it, Your Honor. You can order that and they will have no  
23 experts. They have no experts to -- fine. It's their  
24 problem. Let's have them.

25 THE COURT: It's not going to be their problem for

1       those two plaintiffs?

2               MR. JOFFE: All five. All five plaintiffs are in  
3       the same boat.

4               THE COURT: No, you're telling me, then, that those  
5       two plaintiffs, they're not going to be in the United States.  
6       And then if I issue that order, then I'm going to have to  
7       show -- you're going to have to show cause why I shouldn't  
8       dismiss their case. Then you're going to be in a position of  
9       arguing to me for an order that is adverse to the interests  
10      of two of your five clients, while beneficial possibly to  
11      three of your five clients and you'll need to think about  
12      whether you're in a conflict.

13              MR. JOFFE: Your Honor, how can we have an exam  
14      when we don't know who the -- the defendants don't tell us  
15      who their experts are, what they want -- what --

16              THE COURT: Does the rule provide you're entitled  
17      to advance notice of the name of the doctor?

18              MR. JOFFE: Of course. Under the rule, yes. Under  
19      Rule 35, yes. The order may be made only on motion for good  
20      cause and it must specify the time, place, manner, conditions  
21      and scope of designation. And I don't understand how that  
22      order can do so, if they don't know who their experts, what  
23      are they going to examine, and they don't. I have them on  
24      the record, with an e-mail saying that, that they don't have  
25      experts to examine, and this whole issue of dismissing

1 Chinese because of that is a little bit incongruous, because  
2 we have three Americans here and none of them are being  
3 medically examined. Jade Cheng is sitting for her deposition  
4 today, Your Honor, and will sit for another day. There are  
5 no arrangements for any examination. He's here in Boston.  
6 Who is examining him? And who is examining Caroline? Nobody  
7 asked for her examination. Defendants didn't. She's here --

8 THE COURT: I'll tell you what. Mr. Saso, it's  
9 clear to me that this is not going to be worked out the way I  
10 thought it would be worked out, which is practically,  
11 sensibly, efficiently, and without undue burden on the  
12 parties, which is when I allowed your order or your request,  
13 I thought you would all work out the details. Mr. Joffe is  
14 electing to -- as is his right, to stand on the requirements  
15 of the Rules of Civil Procedure and certainly the rule  
16 requires, among other things, that the order identify the  
17 person or persons who must perform it, time, place, manner  
18 and conditions.

19 So I think this is what I'm going to do. I'm  
20 prepared to issue such an order. You will need to propose to  
21 me where, when, and whom. I'm not going to hold you to the  
22 November 13th date. I thought -- originally, I made the  
23 judgment that those should occur during fact discovery, but  
24 now, given that Mr. Joffe has been standing on that, but it  
25 hasn't come to my attention by either of you until now, and I

1 think it was reasonable to try to work it out among  
2 yourselves, given the big issue to be decided, ordinarily,  
3 under Rule 35, is whether a Rule 35 examination occurs. In  
4 my experience, usually the fight is over whether a party is  
5 entitled to a Rule 35 examination and sometimes there's a  
6 dispute over the particular conditions that govern it, have  
7 not before, in all the years that I've been a magistrate  
8 judge or a district judge, have a dispute over the location  
9 or the time or the name of the person performing it, but  
10 apparently there's a first for everything.

11 So you should make a motion to me with respect to  
12 each of the five -- it could be the same motion -- it's one  
13 motion, but it could have differences for different people.  
14 And as to the specifics of 35(a) (2). You don't need to  
15 address whether you have a good cause, which is (a) (2) (A),  
16 because I've decided by my order that there is good cause.  
17 But you do need to -- my order needs to address (a) (2) (b).  
18 And so you propose to me what (a) (2) (b) is and then I'll  
19 address it.

20 MR. SASO: And Your Honor, two things. First, I do  
21 want to clarify that we -- as you know, some of the things  
22 that are required by Rule 35 include things like the day and  
23 time and that is what I tried to meet and confer with  
24 Mr. Joffe about --

25 THE COURT: I understand. You tried to meet and

1 confer over it. So what you're going to do instead is --  
2 that was a sensible way to proceed, Mr. Saso, but Mr. Joffe  
3 doesn't want that. He wants an order from the Court  
4 specifying the date, time, and place.

5 So you are to arrange your expert and you can  
6 secure an expert and you will propose a time, and you will  
7 need to confer, under the local rules, so you need to tell  
8 him when it is, but if you don't -- and you can reach  
9 agreement as to that, but if you don't reach agreement, you  
10 just propose it. And if it seems reasonable to me, then I  
11 will allow it, and then they will have to show up at that  
12 time.

13 I think it's a more efficient way, the way you  
14 proceeded, because you would negotiate over it and then you  
15 could consider your schedule and the doctor's schedule, and  
16 the witness's schedule and Mr. Joffe's, but that procedure  
17 has been rejected, so we're not going to do it that way.

18 MR. JOFFE: Your Honor, I apologize, Your Honor. I  
19 was proposing to have a stipulation. I was proposing to have  
20 doctors and date and time arranged. They didn't. You're  
21 saying that they were pursuing that and I refused. I was the  
22 one pushing for it.

23 THE COURT: You're the one who's just told me that  
24 the order I issued is no good, Mr. Joffe. You told me that  
25 the order was no good and they didn't have to sit without a

1 proper order. Right?

2 MR. JOFFE: Yes. No, but the discussions of to  
3 have it stipulated. I asked which witnesses, what -- I mean,  
4 which experts, what dates we need. We can do it by order.  
5 We can do it by stipulation. I was the one pushing, let's  
6 agree on these details. Let's have a stipulation so ordered  
7 by the Court. We're on the record on that, Your Honor. A  
8 year ago we filed the papers, status report, saying that's  
9 what our requirements are.

10 THE COURT: Yes, Mr. Callaghan?

11 MR. JOFFE: Or by motion. And they refused my  
12 proposals. Not me, I didn't refuse anything. I was trying  
13 to work out for two people with the pandemic world with visa  
14 restriction for depositions and for medical exams. And I was  
15 pushing for that. I said you want to have it before the  
16 deposition and you have nobody. Tell me the dates, tell me  
17 the topics. So I was not resisting that. I just want the  
18 record to be clear. And if necessary, I'll pull the e-mails  
19 and show. They were resisting it. They -- they actually  
20 backloaded the schedule, so we have all the depositions  
21 happening in two weeks.

22 Your Honor, I was pushing to get the deposition  
23 scheduled back in August. And we've got -- I proposed  
24 deposition dates in September. I had them scheduled in  
25 October. You know what happened? All the depositions now in

1 the last two weeks. I take depositions at 5:00 a.m. in the  
2 morning and next day at 3 a.m. at night.

3 MR. CALLAGHAN: Your Honor --

4 MR. JOFFE: Two weeks we have depositions  
5 scheduled, two depositions this week, all week, and last week  
6 was all deposition, because they were all backloaded by  
7 defendants. And now they come with this medical exam, which  
8 they haven't done anything for, haven't got any experts,  
9 haven't resolved any outstanding. We have this issue of  
10 telemedical exam, telling it was on the table. Anthony said  
11 they would come back to me, they never did.

12 MR. CALLAGHAN: Your Honor, can I --

13 MR. JOFFE: So they want to say that I rejected the  
14 procedure. That's unfair and that's untrue. They did.

15 THE COURT: Are you done, Mr. Joffe, or anything  
16 else you want to say?

17 MR. JOFFE: That's it. Sorry. Thank you, Your  
18 Honor.

19 THE COURT: You're welcome.

20 Go ahead, Mr. Callaghan.

21 MR. CALLAGHAN: Your Honor, the burden is on the  
22 plaintiffs to bring forward expert reports on, I believe,  
23 it's the 13th of December. We have very little information,  
24 zero information, with regard to the two Chinese nationals  
25 who currently reside in China, very little information with

1 regard to the two Chinese nationals who reside in the US, and  
2 quite a substantial body of information with regard to  
3 Mr. Styller. But we don't know what medical conditions they  
4 are alleging. We don't know, Your Honor, as we sit here  
5 today, what battery of tests to impose on these individuals.

6 Now, Mr. Joffe has used that, in his discussions  
7 with us about telemedicine, et cetera, et cetera. When we  
8 proposed that we defer the medical exams until such time as  
9 we have a clue as to what it is we're looking for, looking to  
10 verify, looking to test, et cetera, he began using that as a  
11 cudgel and he suggested that we should have to take a remote  
12 exam of the two Chinese nationals living in China. We  
13 considered that and the discussion, frankly, never re-ensued,  
14 because we're waiting for him to get back to us on whether or  
15 not we would agree to ask the Court together to defer our  
16 medical exams on the individual plaintiffs until we know what  
17 the conditions they're alleging are. We don't have that as  
18 yet. It's hard to schedule medical exams of a blank slate.

19 THE COURT: Mr. Joffe, I have a question for you.

20 MR. JOFFE: Yes.

21 THE COURT: Do you plan to have experts in this  
22 case?

23 MR. JOFFE: Yes, we do, Your Honor. And --

24 THE COURT: And what type?

25 MR. JOFFE: And our report is due December 13th,

1 under the schedule.

2 THE COURT: Right. What type of experts are you  
3 anticipating?

4 MR. JOFFE: Damages experts.

5 THE COURT: When you say damages experts, do you  
6 mean with respect to the individual?

7 MR. JOFFE: We haven't formulated the strategy for  
8 the experts, but there will be expert testifying as to the  
9 false imprisonment and the --

10 THE COURT: So experts opining on --

11 MR. JOFFE: Emotional -- emotional distress and  
12 medical injuries.

13 THE COURT: And medical injuries.

14 MR. JOFFE: Yes.

15 THE COURT: Okay. As to each of the five  
16 individual plaintiffs?

17 MR. JOFFE: We have emotional distress claims, Your  
18 Honor --

19 THE COURT: No, I know you have the claims. My  
20 question is will you have experts with respect to each of the  
21 five?

22 MR. JOFFE: We will -- no, probably not for each.

23 THE COURT: Which ones?

24 MR. JOFFE: For the ones who were sitting in jail.

25 THE COURT: So the -- are you going to -- other

1 than the three people who were in jail, will you have any  
2 experts, other than a damage expert as to the medical or  
3 emotional condition of the -- and effect on the three people  
4 who sat in jail in China?

5 MR. JOFFE: Yes. We will also have damages experts  
6 that -- economic damages, as well, but as far as medical  
7 experts, we were not planning any medical experts.

8 THE COURT: So you're going to have one or more  
9 experts with respect to economic damages of Integrated.

10 MR. JOFFE: Just business damages kind of experts  
11 who calculates everything.

12 THE COURT: With respect to Integrated, or anything  
13 else other than Integrated?

14 MR. JOFFE: Integrated -- yeah, Integrated, yes.

15 THE COURT: But not with respect to any of the  
16 individual plaintiffs.

17 MR. JOFFE: Economic damages expert, no. We were  
18 thinking about business damages for ACT.

19 THE COURT: Okay.

20 MR. JOFFE: As a company business loss. And for  
21 individual plaintiffs, we'll have an expert who will testify  
22 as to the, you know, mental and emotional distress from  
23 prolonged and tortuous imprisonment.

24 THE COURT: And that expert will be testifying  
25 only --

1 MR. JOFFE: Yes.

2 THE COURT: -- only with respect to the three?

3 MR. JOFFE: Yes, well, we need to think whether  
4 Alex Styller, who was not in jail, but he claims emotional,  
5 whether he needs his own expert, but at least with respect to  
6 three, we'll -- surely, we'll have an expert.

7 THE COURT: And as to the fifth is the spouse,  
8 correct?

9 MR. JOFFE: Yeah.

10 THE COURT: And will the expert be --

11 MR. JOFFE: So Styller and Caroline, they are in  
12 separate category from the imprisoned one. Well, let's -- I  
13 don't want to commit, but we'll probably have an expert for  
14 them, because they're in a slightly different position, yes.  
15 So then the total will be one economic, one imprisonment, and  
16 one emotional distress for --

17 THE COURT: Why shouldn't their examinations occur  
18 after your expert medical disclosures?

19 MR. JOFFE: No reason why they shouldn't, except  
20 for defendants insisted to have it done during our  
21 depositions.

22 THE COURT: Okay.

23 MR. JOFFE: It was their insistence, not ours.  
24 Your Honor, we don't have any issues.

25 THE COURT: Okay. That solves the problem. How

1 long -- that makes it easy.

2 How long, Mr. Saso, after you receive -- or  
3 Mr. Callaghan, after you receive the expert disclosures on  
4 December 13th do you need to provide a letter to Mr. Joffe,  
5 stating what kind -- like what doctor you want to have --  
6 doctor, whatever examinations you want and roughly where? I  
7 understand it still leaves a potential dispute between the  
8 two of you over whether it's in person or telemedicine, but  
9 then you should be able to know, well, we want, you know, a  
10 psychiatrist, or we want an orthopedist, or whatever it is  
11 that you want, or both. How long after you receive the  
12 expert reports?

13 MR. CALLAGHAN: Your Honor, we would anticipate a  
14 week to ten days should be sufficient, but this is one of the  
15 reasons we've discussed it with Mr. Joffe. He doesn't want  
16 to commit, he said it himself, but this is the reason that we  
17 want to discuss this issue, because --

18 THE COURT: So this is what we'll do. He doesn't  
19 want -- so how about we'll say by the 23rd, or the -- of  
20 December, you notify him of whom you -- as to each of the  
21 five, whom you wish that person to be examined by and  
22 whatever conditions you propose about the examination and the  
23 like. And then, Mr. Joffe, I'll come back to how long, but  
24 you confer with them over -- you know, and either you'll  
25 reach --

1 MR. JOFFE: Sure.

2 THE COURT: And what I anticipate is one of two  
3 things. You'll either reach an agreement, which is fine, and  
4 then you can submit it to me and I will order it. Or you  
5 might reach agreement on some things, like maybe Mr. Joffe  
6 says I don't object to the doctor, but I want it -- he says  
7 he wants a telemedicine evaluation and you want an in-person,  
8 or there's a dispute about the conditions. So you'll submit  
9 to me either a status report reflecting your -- what you've  
10 agreed and what the things you disagree on and why, or you  
11 could do it by a motion, but I think it's faster with a  
12 status report. So you say like we've agreed on this for each  
13 of the five and here's our disputes. For examination number  
14 one, you know, we want this and they want that. Examination  
15 number two, we're all agreed. Examination number three,  
16 whatever. And you give me a brief paragraph on what you want  
17 and then I'll resolve it, and perhaps with a hearing. And  
18 then I'll order it on a date like -- I'll order it. Then  
19 you'll have to work out a date, or if you can't, I'll pick a  
20 date.

21 You can assume -- so does that process sound  
22 reasonable and practical to you, Mr. Callaghan and Mr. Saso?

23 MR. CALLAGHAN: Yes, Your Honor, and part of the  
24 reason that we were discussing this was to give lead time, to  
25 the extent that it's being considered, to give lead time to

1 Cathy and Jason to make their arrangements, put their affairs  
2 in order, so they could be here during a window of time where  
3 all of this can be arranged.

4 THE COURT: Well, I'll circle back to that in a  
5 moment.

6 Mr. Joffe, does that sound like a reasonable way to  
7 proceed with this?

8 MR. JOFFE: Yes, Your Honor. Yes, Your Honor.

9 THE COURT: Great. So that leads to one issue that  
10 Mr. Callaghan alludes to with respect to that, which is the  
11 in-person nature which the defendants seek. You know, the  
12 presumption, ordinarily, is in person. Obviously, the world  
13 is different now, under COVID. I will say, that in-person --  
14 I have been persuaded by my Zoom experiences that in-person  
15 is better than Zoom. It's better for court hearings, it's  
16 better -- we don't need to do this court hearing in person  
17 and on balance it makes sense to do this by Zoom. But court  
18 hearings are better in person, even this kind of hearing,  
19 than by Zoom.

20 And so I'm not resolving now this apparent dispute  
21 over in-person or Zoom, but I will say that I can  
22 understand -- I'm not -- there's a number of different  
23 factors to balance, but there's a couple of things to keep in  
24 mind. One, I think in-person is better, including with  
25 respect to medical examinations. Two, the plaintiffs brought

1 the case in Massachusetts, and three, they're going to have  
2 to come here for trial. And it's not altogether clear,  
3 notwithstanding Pfizer's announcing yesterday, maybe it's all  
4 going to be gone by our May trial date. That will be a  
5 beautiful thing, but it may not be, and they're going to have  
6 to come for trial.

7 MR. JOFFE: And Your Honor, Your Honor, I just want  
8 to comment on that. They're fully prepared and they're  
9 working on coming for trial. The issue here is now --  
10 there's two -- they have, also, to come for deposition by  
11 traveling to third country, with all the visas, and all that.  
12 And now, according to defendant, they will have separately,  
13 now, to come to medical exam, in addition to trial. This is  
14 very burdensome. It was just -- you know, we've been taking  
15 depositions of witnesses by defendants in Australia or London  
16 or England by Zoom, and our guys will have to travel three  
17 times now. One to another country to just sit for  
18 depositions, then, according to defendants, travel here --

19 THE COURT: But that -- I don't see the travel --  
20 the travel for deposition is not on the defendants. The  
21 travel on the depositions -- your clients, it's nothing wrong  
22 with it, but they made a choice to sue in the United States.  
23 And by definition, as a matter of law, that required them to  
24 leave China for depositions. You told me that you can't do a  
25 deposition in China.

1 MR. JOFFE: Yes.

2 THE COURT: So that's not -- that's just the way  
3 the cookie crumbles.

4 MR. JOFFE: That is true, and trial is the same  
5 thing, but the medical exam as an extra trip. We don't mind  
6 to deposition -- we didn't object, of course. The trial is  
7 fine, the deposition is fine, but this extra trip, in  
8 circumstances where such trips and nowadays, are difficult.  
9 They're just physically difficult.

10 THE COURT: I understand. I'm not saying I'm  
11 ordering it. I'm not saying, Mr. Joffe, I'm ordering it, but  
12 all I'm saying is I'm seriously considering it.

13 MR. JOFFE: Okay. Thank you, Your Honor. That's  
14 all I can ask for.

15 THE COURT: And so when you submit the status  
16 report to me, then I'll see, and you'll each explain to me  
17 why.

18 MR. JOFFE: Why.

19 THE COURT: And then, Mr. Callaghan, if it's going  
20 to be in person, and the date will be sufficiently far out to  
21 give them time to do the 14 days of quarantine beforehand.  
22 Of and I would -- I don't see how, in the end, the timing of  
23 this, even if it's delayed another month because of the  
24 travel and quarantine is going to make any difference, given  
25 the schedule that we've set.

1           So the only question, Mr. Joffe, is when do you  
2           want to respond to the December 23rd letter? So if you all  
3           gave me a status report by something like January 10th, would  
4           that give you enough time?

5           MR. JOFFE: Yes, that's plenty of time.

6           THE COURT: So that's not for you to respond,  
7           Mr. Joffe.

8           MR. JOFFE: -- arrangement with the other side and  
9           we'll have a joint status report on that.

10          THE COURT: So January 10th, a joint status report.  
11          And you'll just work out among yourselves when you respond  
12          to --

13          MR. JOFFE: Yes, Your Honor, of course.

14          THE COURT: January 11th, because that's a Monday.

15          MR. JOFFE: January 11th. Okay.

16          THE COURT: Fine. Okay. That takes care of  
17          everything in all of your filings, does it not, Mr. Saso?

18          MR. SASO: I believe that's the case, Your Honor.

19          THE COURT: All right. So just to summarize --

20          Maria, this, you should get down for the clerk's  
21          notes.

22          By January 11th -- the Rule 35 examinations will  
23          occur at a later point in time and by January 11th, the  
24          parties will submit a joint status report with respect to  
25          that. Two, with respect to Mr. Pekar's deposition, by next

1 Tuesday, Mr. Joffe will submit something that tells me  
2 whether he's waiving service or not. And if he's not waiving  
3 service, then he'll oppose the motion -- the service motion  
4 filed by the defendants by next Friday.

5 With respect to depositions, you all will work out  
6 the schedule for the people -- we're going to come in a  
7 minute to Mr. Joffe's complaints -- but the second day for  
8 the people who need a second day, you work out a schedule,  
9 and you'll submit something to me. Did we set a date by when  
10 you'd submit that?

11 MR. SASO: I don't think so, Your Honor.

12 THE COURT: How about by next Friday, you'll submit  
13 a schedule -- all the depositions that have been authorized  
14 and you'll tell me they've either occurred or when they're  
15 going to occur, to the extent you need beyond this Friday.

16 MR. JOFFE: So by Friday, this Friday, we need  
17 to --

18 THE COURT: Next Friday.

19 MR. JOFFE: Next Friday. November 20th, right?  
20 Okay.

21 THE COURT: Yes. And Mr. Pekar's obviously, if  
22 it's up in the air, I'll work it out, and then we'll see.

23 MR. JOFFE: Yes.

24 THE COURT: All right. That -- and that resolves  
25 the motion to dismiss with respect to the two Chinese

1 defendants I'll terminate as moot, because they're Rule 35 is  
2 going to come later.

3 So Maria, you can terminate as moot the motion to  
4 dismiss of those two.

5 All right. So that leaves -- are there any other  
6 issues the defendants want to raise?

7 Oh, and with respect to Mr. Bunis, that issue you  
8 raised, you'll just submit to me, as soon as reasonably  
9 practical, the video. I'll watch it, and then I'll -- both  
10 of you can file whatever motions you want to file sometime in  
11 the next two weeks.

12 MR. BUNIS: Yes, that's fine, Your Honor. I would  
13 just say with respect to these upcoming 30(b)(6) motions, or  
14 excuse me, depositions to be scheduled, we were hoping to  
15 schedule them -- given the deadline was Friday, we couldn't  
16 prepare the appropriate witness and get a date selected, so  
17 we proposed to the other side that we push it into the  
18 following week. And it wouldn't affect the schedule and we  
19 would just sort of hold hands and agree to extend together  
20 the deadline for conducting depositions, and that's what we  
21 were hoping to do.

22 The issue -- and we still were proposing to do that  
23 next week. The issue that remains with respect to a 30(b)(6)  
24 deposition is the following, Your Honor. The plaintiffs have  
25 noticed three 30(b)(6) depositions for the following

1 entities, HPE, HPI, and HPFS. They have indicated the same  
2 seven topics that they want to inquire about for those three,  
3 separate corporate entities. We will designate -- have  
4 designated the same individual to testify on behalf of all  
5 three entities and we've stipulated that his testimony, in  
6 one deposition, on behalf of one individual will bind the  
7 other two entities and we've offered that in addition to the  
8 seven hours. If they need a few more hours to clean that up,  
9 we would be amenable to that.

10 The problem is, I think, that the plaintiff wants  
11 the same guy, on the same topics, for the seven hours, three  
12 days and -- two days. Excuse me. Two days. And we think  
13 that that's too much. So that's, I think, the issue.

14 The scheduling issue is we are not saying they  
15 can't take a 30(b)(6) deposition. Absolutely not. We --  
16 with respect to extending it, we'll come up with a day, we  
17 hope next weekend, we can do it and it works for them, and  
18 works for the witness. The remaining issue is what I've just  
19 set forth.

20 THE COURT: Okay.

21 Mr. Joffe?

22 MR. JOFFE: Well, Your Honor, we have -- we noticed  
23 two 30(b)(6) depositions. We agreed with plaintiffs that we  
24 will combine HPE and HPI, which are different defendants, in  
25 one. So we will take one 30(b)(6) of HPE/HPI, which is the

1 former HP, the main company, that didn't produce any  
2 documents. So we wanted to have one deposition of HPE/HPI  
3 combined seven hours. And Mr. Bunis stated, we asked another  
4 deposition of HPFS India. That's a defendant that produced  
5 zero documents, too. We wanted to have the whole story. So  
6 we noticed two depositions for India and for combined  
7 HPE/HPI. They gave us the dates. They told us you can take  
8 HPE/HPI deponent Barclay. He's noticed to testify in his  
9 individual capacity on such a date. You can depose him in  
10 his 30(b) (6) capacity in that seven hours on the same date.  
11 And I said, no, I have here an individual, I have four or  
12 five individual witnesses, but I also have corporate  
13 designees for which I need my seven hours. I need my seven  
14 hours for HPFS India, and I need my seven hours for one  
15 combined HPE/HPI 30(b) (6) witness.

16 They canceled both witnesses last week unilaterally  
17 and this week we have Barclay as one of the witnesses and  
18 O'Grady as another. And Sunday night, they canceled all  
19 30(b) (6) depositions again.

20 THE COURT: So let me see if I understand,  
21 Mr. Joffe.

22 MR. JOFFE: They don't give me a single hour to  
23 take the --

24 THE COURT: Hold on. Hold on. So you agreed that  
25 one 30(b) (6) witness for one day could appear for HPE and

1 HPI, correct?

2 MR. JOFFE: Yes, Your Honor. Yes, Your Honor.

3 THE COURT: And you want a separate --

4 MR. JOFFE: HPFS India, Your Honor.

5 THE COURT: I'm just looking for where you went.

6 You disappeared. Oh, there you are.

7 So then you wanted a second 30(b)(6) deponent for  
8 HP India.

9 MR. JOFFE: Correct.

10 THE COURT: They designated Mr. Barclay as the  
11 person who would be the 30(b)(6) deponent for all three of  
12 those entities, correct?

13 MR. JOFFE: Yes. And also O'Grady, who will also  
14 be for all three, but with respect to a specific topic, out  
15 of my 30(b)(6).

16 THE COURT: And --

17 MR. BUNIS: No, Your Honor. Incorrect, Your Honor.  
18 The single witness, Mr. Barclay, will be the deponent for all  
19 three entities.

20 THE COURT: He's the only person you've designated  
21 as a 30(b)(6) witness?

22 MR. BUNIS: That's correct.

23 MR. JOFFE: As of last night, because before that,  
24 it was for Barclay and O'Grady, but the dates that they were  
25 giving us to take those 30(b)(6) depositions were the dates

1 when this Barclay and O'Grady was scheduled to --

2 THE COURT: So do you also want to depose -- you  
3 also want to depose Mr. Barclay individually?

4 MR. JOFFE: I did, already.

5 THE COURT: You already took his individual  
6 deposition?

7 MR. JOFFE: He was with -- yes, Friday, Your Honor.

8 THE COURT: So Mr. Bunis, he's coming back, in your  
9 view, as a 30(b)(6) separate. So he sat for a day as his  
10 personal deposition; is that correct?

11 MR. BUNIS: That's correct, Your Honor.

12 THE COURT: And then you're saying -- now,  
13 Mr. Joffe -- so you got your personal deposition with  
14 Mr. Barclay, right?

15 MR. JOFFE: Yes, Your Honor.

16 THE COURT: All right. And now, the defendants  
17 want to say he's the 30(b)(6) deponent for all three  
18 companies and you say you should get two days for that and  
19 they say you should get a day or a day and a half.

20 Is that the dispute?

21 MR. JOFFE: Well, so far they didn't give me any  
22 days. They just cancel. They keep cancelling those days.  
23 So we have November 13th and, as of today, before we  
24 extended, we have November 13th ending the depositions and  
25 all my 30(b)(6) being canceled, every week. We have no --

1 they don't propose the dates that we can really take them,  
2 because the 13th is the deadline.

3 THE COURT: What do you want? Do you want one day  
4 or two days?

5 MR. JOFFE: I want seven hours of HPFS -- sorry.

6 THE COURT: So you want two days.

7 MR. JOFFE: I want one 30(b)(6) witness for HPFS  
8 India, one. And I want one combined for HP and HPI.

9 THE COURT: So you want two days for those three  
10 entities?

11 MR. JOFFE: I want two days of depositions as you  
12 authorized by your order, Your Honor.

13 THE COURT: Okay and --

14 MR. JOFFE: Not substituting anyone, or combining  
15 anyone two in one, but I want seven hours a day for them.

16 THE COURT: And are the topics the same for all  
17 three entities?

18 MR. JOFFE: The topics are slightly different, but  
19 some entity like HPFS India was more involved in the India  
20 part and the HPE and HPI were more involved in the  
21 counterfeit investigation. There's not one, there were  
22 actually three going on in China at the time, involving the  
23 same type of equipment.

24 THE COURT: So Mr. Bunis, is the entire dispute,  
25 (a) whether it's two days or a day, day and a half. And (b),

1 it was originally scheduled for some day this week and then  
2 you said no, because the witness isn't ready and you need  
3 more time to prepare, and you proposed this to do it next  
4 week.

5 MR. JOFFE: They didn't propose -- that's not  
6 correct, Your Honor. The witness was not even being  
7 prepared. I asked Mr. Gill -- or Mr. O'Grady whether he was  
8 prepared for his 30(b)(6) this week, and this is the first  
9 time that he heard he was a 30(b)(6) deponent. He never  
10 heard about it until this morning. How was it he was  
11 supposed to testify last week, or this week, if they didn't  
12 even tell him that he was a designee? They undesignated him  
13 last night and I broke the news to him today.

14 THE COURT: Well, I guess they're not as prepared  
15 as you've been.

16 MR. JOFFE: I guess they're not, Your Honor. With  
17 everything, with medical exam, with witnesses, with anything.  
18 They're pushing hard for five years and now they're hitting  
19 the brick wall. They're done. I will show it to you soon,  
20 Your Honor. I don't think we're going to have a May trial.  
21 I think we'll finish this case very soon.

22 THE COURT: You know, we built a courthouse for the  
23 courtroom for trials. I'm happy for a trial. If you all  
24 want to settle your case before trial, you're welcome to do  
25 that.

1 All right. So with respect to the scheduling, I  
2 don't really think we need, one, two, three, four, five, six  
3 lawyers, plus whoever is not in the video at Mr. Bunis's  
4 office, and -- to resolve the question of when the 30(b)(6)  
5 deposition occurs. I think that whether you're agreed,  
6 Mr. --

7 I understand why you might be annoyed, Mr. Joffe,  
8 that you had it scheduled for a certain day and then they  
9 said that it's not going to go forward on that day.

10 MR. JOFFE: With no excuses or explanations. Not  
11 that their witness was not ready, not whether they need time  
12 to prepare, no excuses. Just we cancel it. How could it be,  
13 Your Honor? Unilaterally cancel deposition after deposition.  
14 He said that he never seen anything in 27 years. I haven't  
15 seen anything like that in my 23 years. That somebody will  
16 cancel deposition unilaterally.

17 THE COURT: Really?

18 MR. JOFFE: Day after day, unbelievable.

19 THE COURT: Okay. So what do you want for that,  
20 Mr. Joffe?

21 MR. JOFFE: I just want to have two depositions.  
22 And Your Honor, I will come back with a further request.  
23 What I -- well, I'll come back. I just need two days of  
24 depositions of their 30(b)(6) witnesses that we're entitled  
25 to. You ordered them to produce --

1 THE COURT: If you want two days, the best thing to  
2 do would be quiet. Okay. If you want to fight about the  
3 schedule and you want to seek sanctions for the fact that, in  
4 your view, they canceled the deposition the day of, then you  
5 can seek sanctions for that, okay? And you go ahead and file  
6 that motion and I'll resolve it, but with respect to the  
7 schedule, you can work that out with them.

8 MR. JOFFE: Yes.

9 THE COURT: You ought to be able to work it out.  
10 If you can't work it out with them, then I'll decide when it  
11 occurs. Okay?

12 MR. JOFFE: Thank you, Your Honor.

13 THE COURT: But really, I think it's ridiculous  
14 that, Mr. Joffe, to be here arguing about, they changed it,  
15 it's annoying. I understand why you might be annoyed, but  
16 like is this is the most -- you're a New York lawyer. If  
17 this is the most difficult thing that happened to you in the  
18 course of your years of practice in the City of New York, I'm  
19 stunned. I'm not unfamiliar with New York. I went to law  
20 school in New York. I briefly, very briefly, worked at some  
21 law firms in New York in the summers. I spent a lot of hours  
22 in the course of law school sitting in the state and federal  
23 courts in New York watching proceedings. I have some  
24 understanding of how the practice of law occurs in New York.  
25 If this is what blew through your skin, I find that stunning.

1 MR. JOFFE: Your Honor, Your Honor, I would like to  
2 disabuse you of that notion.

3 THE COURT: Yes.

4 MR. JOFFE: It didn't touch me in any way.

5 THE COURT: Right. So just work out the date with  
6 them and get over it. Okay. So the real issue is two days  
7 not one day. That's the dispute.

8 Mr. Bunis, briefly. Why should it be one day or  
9 one and a half, or whatever you're proposing, rather than  
10 two?

11 MR. BUNIS: Your Honor, the similarity of the  
12 subject matter, the fact that it would be the same witness  
13 and the fact that he's already taken that same witness's  
14 deposition already for seven hours means, to us, that 14 --  
15 21 hours in total with the same guy is too much.

16 THE COURT: Day and a half. All right? Seven  
17 hours and three and a half hours, for that witness. So for  
18 the --

19 Maria, for the memorialization in the clerk's  
20 notes, the 30(b)(6) deposition of the defendant entities will  
21 be 1.5 days with the same witness.

22 Is there anything else you wanted to raise,  
23 Mr. Joffe?

24 MR. JOFFE: No, Your Honor. Thank you.

25 THE COURT: Okay. Maria --

1                   And did that cover everything that you had,  
2                   Mr. Bunis, Mr. Saso, and Mr. Callaghan?

3                   MR. BUNIS: Yes, Your Honor.

4                   MR. CALLAGHAN: Yes, Your Honor.

5                   THE COURT: Do you know how they can submit the  
6                   video to me?

7                   THE DEPUTY CLERK: Yes. They can file it on -- you  
8                   know, send it in on a disc --

9                   THE COURT: Is that what they're going to have to  
10                  do, send it in on a disc?

11                  THE DEPUTY CLERK: Well, that or -- they can  
12                  probably -- I don't know if they can e-mail it to me and I  
13                  don't know if I can download it.

14                  THE COURT: This is what you can do, Mr. Bunis.  
15                  You can either send us a disc or a flash drive. If you do  
16                  that, we'll have to load it into our network drive and once  
17                  you do that, then I can get it wherever I am.

18                  Alternatively, you can -- if you have some sort of  
19                  cloud site that has it on it, you can e-mail whatever  
20                  information is required to Ms. Simeone, the link and whatever  
21                  information is needed to access it. Obviously, whatever way  
22                  you do it, copying Mr. Joffe. And then she can forward that  
23                  on to me and I can access it that way. I only ask if you do  
24                  that, that is a link to a cloud site, that it would be better  
25                  if it was not a cloud site that has all your discovery on it,

1 like for the shared discovery, or whatever, cloud sites using  
2 for that. Something separate like virtually separate. I  
3 don't want to be poking around in other things that are  
4 submitted. And I think that would be a faster way to get it  
5 to me. And then you could -- I think for the purposes of the  
6 record, it would probably still be good to send in the flash  
7 drive --

8 THE DEPUTY CLERK: Judge.

9 THE COURT: -- that would in the Court's file.

10 THE DEPUTY CLERK: I've just been advised, we don't  
11 allow flash drive. I guess it has to be a disc.

12 THE COURT: All right. There we go. It has to be  
13 a disc. So if you provide a link, I can look at it  
14 potentially today or tomorrow, which might move this -- that  
15 issue along. But if -- and then you can file the disc a  
16 little later for the purposes of the record.

17 MR. BUNIS: Your Honor, I will take care of it, and  
18 most importantly, the person who's in the room is Mr. Quigley  
19 and he's the person who I'm sure will figure all of this out  
20 and make it happen.

21 THE COURT: I knew there was somebody whispering in  
22 your ear, Mr. Bunis, telling you what to say. All right.

23 So I think that's everything. Everybody know what  
24 dates things need to be done on?

25 MR. JOFFE: Yes, Your Honor.

1 THE COURT: All right.

2 Mr. McGuire, you've been so quiet, anything that  
3 you want to add?

4 MR. JOFFE: No.

5 MR. MCGUIRE: As soon as I find the unmute button,  
6 I can report to you.

7 No, there's nothing that I need to add.

8 THE COURT: Okay. All right. Well, as always, a  
9 pleasure to see all of you -- well, I do have another  
10 question with respect to the trial.

11 So how many people -- there are two possibilities  
12 for this trial, one is that the restrictions that are imposed  
13 on our conducting trials have evaporated by May, or relaxed,  
14 and fine, then we'll just proceed in the ordinary way. We  
15 are proceeding with jury trials, criminal and civil, but  
16 obviously more slowly and under certain limitations, social  
17 distancing, masks and the like.

18 So on the plaintiffs' side, who would be present,  
19 from your perspective, for the trial, in the courtroom?

20 MR. JOFFE: Well, me. I hope I'll be present, Your  
21 Honor, and we have another law firm that is coming in any day  
22 now.

23 THE COURT: Okay. And how many lawyers?

24 MR. JOFFE: It's a big law firm. I don't know, but  
25 it's a big law firm.

1 THE COURT: So you'd anticipate a fair number of  
2 lawyers?

3 MR. JOFFE: I anticipate a calvary going down.  
4 Now, eight.

5 THE COURT: Okay. All right. And so -- and how  
6 many of your clients would there be? There would be  
7 Mr. Styller, he would be there for himself, and he would be  
8 there for Integrated.

9 MR. JOFFE: Your Honor, are you going to be asking  
10 who is going to be witnesses?

11 THE COURT: No. Literally sitting in the  
12 courtroom.

13 MR. JOFFE: Okay. Well, we have three plaintiffs  
14 who live here and they will be present.

15 THE COURT: That's Mr. Styller.

16 MR. JOFFE: Styller, he calls himself, Jade Cheng,  
17 and Caroline. They're all here. They will be present  
18 physically. And by that time, when is it? May? Hopefully  
19 the Chinese will get here with their visas and passports.

20 THE COURT: So that will be two more.

21 MR. JOFFE: Right. Jason and Cathy.

22 THE COURT: Five.

23 MR. JOFFE: Five plaintiffs. Yes.

24 THE COURT: Didn't I sever the family plaintiffs?  
25 Caroline's case is not derivative?

1 MR. JOFFE: Well, it is. I mean, she is part of  
2 family, plaintiff, but she was in the United States. So when  
3 we --

4 THE COURT: Her case isn't going to trial in May,  
5 is it?

6 MR. SASO: That's our understanding, Your Honor.  
7 She is a witness, even in this case, for --

8 THE COURT: Yeah, sure.

9 MR. SASO: Right.

10 THE COURT: Okay. So you'd have the three people  
11 who were imprisoned in China, plus -- he says Styller?

12 MR. JOFFE: Yes. He calls himself Styller.

13 THE COURT: That's four. You'd have four people,  
14 plus you is five, plus the calvary.

15 MR. JOFFE: And the calvary, yes. Yes.

16 THE COURT: Okay. And on the defendants' side,  
17 there would be -- hold on.

18 MR. JOFFE: Sorry, Your Honor, also two teams of  
19 translators. We'll need probably three. We need Russian,  
20 we'll need Chinese, Mandarin, and we'll need Portuguese.

21 THE COURT: Who will you need for the parties?  
22 Never mind the witnesses. For the parties.

23 MR. JOFFE: Oh, okay.

24 THE COURT: Any of them need a translator to  
25 understand the proceedings?

1 MR. JOFFE: Well, no. I think for the parties we  
2 won't need the translators. I think they'll be okay, but for  
3 testimony --

4 THE COURT: Some witnesses will require a  
5 translator.

6 MR. JOFFE: Yes, Your Honor.

7 THE COURT: All right. So fine.

8 So for the defendants, how many parties you'd  
9 have -- assuming it stands the way it does now, the  
10 individual defendants are whom? Remind me.

11 MR. CALLAGHAN: David Gill, Your Honor, is an  
12 individual defendant, and then it's the corporations, HPI,  
13 HPE, HPFS, and HPFS India.

14 THE COURT: So four corporate entities, would each  
15 corporate entity have its own representative, or one person?

16 MR. CALLAGHAN: We could probably reduce that to  
17 one to two people, Your Honor, as representatives present in  
18 the courtroom.

19 THE COURT: And would Mr. Gill be attending the  
20 entire trial, you'd anticipate?

21 MR. CALLAGHAN: That would be our hope. Yes, Your  
22 Honor.

23 THE COURT: All right. So you'd have Mr. Gill and  
24 call it two, one to two, corporate representatives, and then  
25 how many lawyers -- never mind how many would be if we were

1 preCOVID, but how many do you think, just sort of ballpark,  
2 you could do the case with people in the courtroom between  
3 lawyers and paralegals?

4 MR. CALLAGHAN: I'd say five, Your Honor, we could  
5 manage. It's not quite the calvary.

6 THE COURT: All right. Okay. I just want to  
7 figure these numbers out for planning purposes, because there  
8 are limits to the number of people, presently, we can have in  
9 the courtroom during a trial.

10 So you should know that, just for your own planning  
11 purposes, it's ordinarily my practice for a trial, in a civil  
12 case, to impanel a jury of 12. However, in COVID, that's not  
13 likely, for two reasons. One is, given the number of people,  
14 we just can't get everybody in a courtroom with a jury of 12.  
15 And two, given just sort of minimizing risk, if we're not  
16 required to have a larger number of people, it's more prudent  
17 to have a smaller number of people. So more likely, I  
18 would -- in a short civil case, I would impanel seven or  
19 eight, so we have one or two extras, because six is the  
20 minimum.

21 So as we get closer, we'll see what the COVID  
22 restrictions are. Hopefully by then we'll be loosening up,  
23 or have loosened all of the COVID restrictions and this will  
24 all be irrelevant, but if it isn't -- and then we'll talk  
25 about how long the trial will be and then the numbers of

1 people we need and we'll figure it out.

2 There are, obviously, other people who might want  
3 to -- so for example, who might want to observe, family  
4 members and whatever, and that they'll -- if we're in the  
5 present world, they'll be able to do that by Zoom, or in an  
6 overflow courtroom, so it won't be that they're utterly  
7 excluded, but just physical presence.

8 Okay. Anything about that, or anything else before  
9 we adjourn?

10 Hearing nothing, thank you very much, you have a  
11 good day, and we are adjourned.

12 THE DEPUTY CLERK: This matter is adjourned.

13 (Court in recess at 4:48 p.m.)  
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**CERTIFICATE OF OFFICIAL REPORTER**

I, Rachel M. Lopez, Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 17th day of November, 2020

/s/ RACHEL M. LOPEZ

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Rachel M. Lopez, CRR  
Official Court Reporter